IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.125 OF 2003

Dr.(Mrs.) Poornima M. Deshpande,
nee Dr. Poornima Joshi,
r/o H.No.767, Near Shantadurga
Temple, Alto Betim, Bardez,
Goa 403521 .... PETITIONER

VERSUS

1. The Dean,
   Goa Medical College,
   Bambolim, Goa;

2. State of Goa,
   through the Chief Secretary,
   having office at Secretariat,
   Panaji, Goa .... RESPONDENTS

Shri S.G. Bhobe, Advocate for the Petitioner.

Shri A.N.S. Nadkarni, Advocate General, with Shri H.D. Naik, Addl. Government Advocate, for the Respondents.

CORAM : S.J. VAZIFDAR &
P.V. HARDAS,JJ.

DATED : APRIL 3, 2003.

ORAL JUDGMENT (PER **S.J. VAZIFDAR,J.**

Rule. By consent of the parties, heard forthwith.

2. The Petitioner has challenged Rule III (1) (iii) of the Goa (Rules for Admission for Postgraduate Degree Courses of Goa University at the

Goa Medical College) Rules, 1998 as arbitrary, unreasonable and unconstitutional. The Petitioner has also prayed for a Writ of Mandamus directing the Respondents to consider her for admission to the Post-Graduate Degree/Diploma Course at Goa Medical College on merit, independent of the requirement in the said Rule.

3. Rule III (1)(iii) reads as under:-

> **"III. Eligibility, Preference and Order of Merit**
>
> (1) **Eligibility.**- Candidates applying for admission to the postgraduate degree courses shall:
>
> (i)... ... ...
>
> (ii).. ... ...
>
> (iii) have resided in the State of Goa for a minimum period of ten years preceding the last date of receipt of application."

4. The Petitioner is from Hubli, Karnataka. On 21st February, 2000, she married one Dr.Milind Deshpande, a permanent resident of Goa, and since then has been residing in Goa. In March 2001, the Petitioner applied for admission to the Post-Graduate Degree/Diploma Course at Goa Medical College. The application was rejected in view of the aforesaid Rule rendering her ineligible on account of non-fulfilment of the minimum residential requirement

of ten years. In March 2002, a similar application met with the same fate though after she was called for an interview. The Petitioner persisted with a similar application in February 2003, which too, met with the same fate.

5. Mr. Bhobe, the learned Counsel appearing on behalf of the Petitioner, relied upon a Judgment of the Full Bench of this Court in the case of **Dr. Rakesh Ravi v. Dean, Goa Medical College and others** [(1998) 1 G.L.T. 270] in which the Full Bench held that the Rule was directory and not mandatory. This Judgment was in turn followed by a Division Bench of this Court in **Dr. Sudhir Solanki v. Dean Goa Medical College** (**Writ Petition No.305 of 1999 dated** 9th December 1999). The 1st Respondent filed a petition for Special Leave against the Judgment of the Division Bench. The Supreme Court in this Appeal overruled the Judgment of the Division Bench [**Dean, Goa Medical College v. Dr. Sudhir K. Solanki & another - (2001) 7 S.C.C. 645].** The Supreme Court upheld the validity of Rule III (1) (iii) and held the same to be mandatory and not merely directory. Paragraph 4 of the Judgment reads as under:-

> " 4. We have carefully considered the submissions of the learned counsel appearing on either side. The learned Judges of the High Court have wholly misconstrued the ratio of the

earlier decisions of this Court wherein what was really deprecated was the wholesale reservation of seats made by some of the State Governments on the basis of domicile or residence requirement within the States or on the basis of institution preference, regardless of merit. In the decision reported in **Parag Gupta (Dr) v. University of Delhi** to which one of us (Rajendra Babu,J.) was a party, after a careful analysis of the earlier decisions in their proper perspective, has declared the correct position of law to be that the rule of preference on the basis of domicile or requirement of residence is not bad provided it is within reasonable limits and does not result in reserving more than 70% to 80% of the seats available. Indisputably, in this case 25% of the seats in the postgraduate courses have been earmarked and allotted for being filled up on all-India basis on merit basis. In addition, we have directed that students who had obtained admission on the seats earmarked for all-India quota in medical colleges in the State also can compete with the local students in 75% seats allocated to them in **Prachi Almeida (Dr) v. Dean, Goa Medical College** disposed of today, thus, making further demands on the number of seats reserved for local students with the application of the rule of 10 years' residence. Consequently, we see no infirmity whatsoever in Rule III (1) (iii) of the Goa Rules, 1998 and the same cannot be said to be merely directory or, for any reason, illegal. An eligibility criteria statutorily stipulated can by no means be held to be directory resulting in a nebulous state of affairs in the matter of selection of candidates for admission. There could be only two alternative courses, namely, either the rule is unconstitutional or illegal for

> any reason and, therefore, to be struck down or on the other hand valid and invariably and uniformly enforceable without any reservation whatsoever, as binding and mandatory in character. The reasoning of the High Court, therefore, does not deserve to be approved and the same is unsustainable."

6. In view of the aforesaid Judgment of the Supreme Court, we are afraid that the Petitioner is not entitled to succeed.

The Petition is, therefore, dismissed, but with no order as to costs. Rule is discharged.

S.J. VAZIFDAR,J.

P.V. HARDAS,J.

ac.